

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 2-554

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JUL 23 1997

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In the Matter of)
Annual Assessment of the Status of) CS Docket No. 97-141
Competition in Markets for the)
Delivery of Video Programming)

To: The Commission

COMMENTS OF THE
MONTANA ELECTRIC COOPERATIVES' ASSOCIATION

Pursuant to Section 1.415 and 1.419 of the Federal Communications Commission's (FCC) Rules, the Montana Electric Cooperatives' Association (MECA) hereby submits its comments on the Notice of Inquiry, FCC 97-194, adopted June 3, 1997 and released June 10, 1997, in the above-captioned proceeding in which the FCC seeks to gather information, data and public comment necessary to prepare the fourth annual report (1997 Competition Report) on competition in markets for the delivery of video programming.

Montana Electric Cooperatives' Association (MECA) is a state association of 28 consumer-owned rural electric distribution and generation and transmission systems which supply electricity to approximately one-third of the people of the State of Montana. Electric cooperatives serve approximately two-thirds of the land area in Montana and operate 48,818 miles of electric lines in the state, often providing services to the farthest reaches of Montana. Electric cooperatives in Montana average 2 customers per mile of line, and serve large geographical areas where there are fewer than one consumer per mile.

Comments

In the above captioned Notice of Inquiry (Notice) at III.20 the FCC stated that there are ten specific changes from the Telecommunications Act of 1996 (Public Law 104-104) relating to competition in video markets on which comment would be useful. MECA hereby provides comments on the eighth listed change, "Pole Attachment Regulation":

Pole Attachment Regulation Section 703 of the 1996 Act expands the application of the pole attachment rate formula to include telecommunications carriers in addition to cable systems. Section 224(a)(4) of the Communications Act now defines "pole attachment" as "any attachment by a cable

system or provider of telecommunications service to a pole, duct, conduit, or right-of-way owned or controlled by a utility." However, poles, ducts, conduits, or rights-of-way owned or controlled by any railroad, cooperative, or any federal or any state entity are not considered utilities for this purpose and are exempt from this regulation. We seek comments on the effect on competition that this exemption has on entities offering telecommunications services, including video services. In particular, we seek information to demonstrate whether the rates charged for pole attachments by cooperatives and municipalities, especially in rural areas, impede or promote competition.

MECA first notes that the Notice of Inquiry appears to have glossed over a major legislative change stemming from the Telecommunications Act of 1996: all pole attachment rates are now subject to negotiation prior to regulation by a state or federal regulatory body (see S. Rept. 104-230, Conference Report to Accompany S. 652, Section 703(7)). The Telecommunications Act of 1996 specifically states that, "The Commission shall, no later than 2 years after the date of enactment of the Telecommunications Act of 1996, prescribe regulations in accordance with this subsection to govern the charges for pole attachments used by telecommunications carriers to provide telecommunications services, **when the parties fail to resolve a dispute over such charges.**" (*Emphasis added*) It seems clear to MECA that Congress intended that negotiations are the preferred method for setting pole attachments.

Our national organization, National Rural Electric Cooperative Association, recently conducted a survey of 525 of its distribution cooperative members to determine their pole attachment policies. Collectively, they own about 2.8 million poles. Over 93 percent of these cooperatives own poles that are jointly used by other entities such as telephone companies and cable TV companies. The average rate they charge is \$6.71 per pole, and some cooperatives do not charge an attachment fee. By contrast, over 76 percent of the distribution cooperatives attach to poles owned by other entities. They are charged an average of \$9.02 per pole.

Also according to this national survey, a large majority (84%) of the distribution cooperatives set their pole attachment rates through negotiation. There is considerable downward pressure on the rates they charge because the consumers they serve, their members and neighbors, are also provided telephone and cable television services by the attaching entities. For the consumer, it's a "zero-sum game" economically because an increased charge by the pole owner is passed on to the consumer through the rates of the attaching entity.

Accordingly, 75 percent of the distribution cooperatives reported that their pole attachments rates do not recover the attaching entity's proportionate share of the full cost of the pole.

Further, the Small Cable Business Association and the National Cable Television Association have accused electric cooperatives and telephone cooperatives of "erecting competitive barriers" involving pole attachment rates and conditions. They accuse "many cooperatives (of) having become DBS retailers" (FCC 97-164, Section 257 Proceeding to Identify and Eliminate Market Entry Barriers for Small Businesses, Released May 8, 1997). The facts are not supportive of such claims. According to our national organization, only around 70 rural electric cooperatives hold the rights to market DIRECTV in rural areas (mainly through subsidiaries) and an additional 15-20 rural electric cooperatives act as agents for DBS service, whereas there are about 1,000 rural electric cooperatives in the United States. Based on the foregoing rate statistics, the small number of cooperatives involved in DBS, and Congress' intent that negotiations are the preferred method of rate determination, MECA challenges the assertions that cooperatives are thwarting cable companies' business plans through punitive pole attachment rates and conditions.

Electric cooperatives retain rights and obligations under local, state and federal laws to provide safe, reliable electric service. Such service requires that electric cooperatives maintain poles and right-of-way in operable condition and have the final word over what other attachments may be placed on their facilities since they are responsible for ensuring that any attachment to one of their poles is done in a safe, pre-approved manor consistent with sound engineering standards. This has not always been the case when cable companies choose to attach to electric poles.

MECA's membership is very much opposed to regulation of pole attachments, at any level of government and particularly a "one-size-fits-all" regulation. None of the distribution cooperatives in Montana are regulated by state government. We would certainly strongly oppose regulation on a federal level.

Regardless of any legislation which has been or may be passed vesting regulatory authority over pole attachments with the Federal Communications Commission, it is our position that such legislation, whether it includes electric cooperatives or not, is bad legislation, and pole attachment matters should be a matter of contractual arrangements between interested parties.

We must take all necessary measures to oppose any mandated pole attachment regulations.

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MECA very much appreciates this opportunity to provide comments on pole attachment rates charged by distribution cooperatives and the strong feelings of the MECA members regarding pole attachment regulation.

Respectfully submitted,

MONTANA ELECTRIC COOPERATIVES'
ASSOCIATION

By:



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